

National Council On Disability

§ 10000.5

inspection and copying may be accessed through the Agency's Web site at *www.ncd.gov*. The Council is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Council shall ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. The Council's FOIA Public Liaison can assist individuals in locating records particular to a component.

§ 10000.4 Categories of exemptions.

(a) The FOIA does not require disclosure of matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under executive order;

(2) Related solely to the internal personnel rules and practices of the Council;

(3) Specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, as amended), provided that such statute:

(i)(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3);

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters, which would not be available at law to a party other than an agency in litigation with the Council;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of

such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 10000.5 Request for records.

(a) You may request copies of records under this part by email to *FOIA@ncd.gov* or in writing addressed to FOIA Officer, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004.

(b) Your request shall reasonably describe the records sought with sufficient specificity, and when possible, include names, dates, and subject matter, in order to permit the FOIA Officer to locate the records with a reasonable amount of effort. If the FOIA Officer cannot locate responsive records based

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on your written description, you will be notified and advised that further identifying information is necessary before the request can be fulfilled. Although requests are considered either FOIA or Privacy Act requests, the Council processes requests for records in accordance with both laws so as to provide the greatest degree of lawful access while safeguarding an individual's personal privacy.

(c) Your request should specify your preferred form or format (including electronic formats) for the records you seek. We will accommodate your request if the record is readily available in that form or format. When you do not specify the form or format of the response, we will provide responsive records in the form or format most convenient to us.

§ 10000.6 Responsibility for responding to requests.

(a) *In general.* The Council delegates authority to grant or deny FOIA requests in whole or in part to the Chief FOIA Officer. When conducting a search for responsive records, the FOIA Officer generally will search for records in existence on the date of the search. If another date is used, the FOIA Officer shall inform the requester of the date used.

(b) *Responses.* The Chief FOIA Officer will notify you of his or her determination to grant or deny your FOIA request in the time frame stated in § 10000.8. The Council will release reasonably segregable non-exempt information. For any adverse determination, including those regarding any disputed fee matter; a denial of a request for a fee waiver; or a determination to withhold a record, in whole or in part, that a record does not exist or cannot be located; or to deny a request for expedited processing; the notice shall include the following information:

(1) FOIA case number and date of the original request;

(2) The name(s) of any person responsible for the determination to deny the request in whole or in part;

(3) A brief statement of the reason(s) for the denial, including any FOIA exemption applied in denying the request. The FOIA Officer will indicate, if technically feasible, the amount of

information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;

(4) An estimate of the volume of information withheld, if applicable. This estimate does not need to be provided if it is ascertainable based on redactions in partially disclosed records or if the disclosure of the estimate would harm an interest protected by an applicable FOIA exemption; and

(5) A statement that the adverse determination may be appealed and a description of the requirements for an appeal under § 10000.7.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Council in response to a request, the Council shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. As to any such record, the Council shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the Council, but contain within them information of interest to another agency, the Council should typically consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When the Council believes that a different agency is best able to determine whether to disclose the record, the Council typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Council and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and